U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-E-

DATE: JAN. 14, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition and subsequent motions to reopen and to reconsider. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate a past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the petitioner, rather than to facilitate the entry of a foreign national with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 19, 2011, at which time she was working as a special education teacher for [redacted] in Maryland. The record indicates that she holds the equivalent of a Master's degree in Special Education and has worked for [redacted] since 2008, having previously taught in the Philippines since 1990.

Documentation supporting the Form I-140 included evidence of the Petitioner's credentials and a personal statement in which she provided a detailed description of her work history. In addition to copies of her training certificates, the Petitioner provided copies of awards she received during her employment in the Philippines, which included certificates of recognition and appreciation for her service as a resource speaker, coach, sign language teacher, and interpreter during special education conventions and events.[1]

[1] In her introductory letter, the Petitioner indicated that she was also awarded "[redacted]" at the [redacted] Philippines, in 2005. The record includes a flyer with a photograph of a woman and the heading: [redacted] October 24-26, 2005," but the document does not identify the woman in the photograph or any other recipients of the award.

The Petitioner also submitted copies of letters from her current and former colleagues, supervisors, a student's parent, and others, attesting to her dedication and effectiveness as a teacher.[2] For instance, assistant principal of indicated that the Petitioner is a "great asset" to who possesses "truly exceptional" knowledge and talent in working with children with emotional disabilities. principal of stated that the Petitioner is a "tremendous asset to our school," and is "skilled in using best practices and strategies to motivate and instruct" her students. a parent, attested that the Petitioner's customized teaching and support have allowed her daughter to thrive beyond previous expectations.

Several letters also discussed the Petitioner's service to the deaf community while in the Philippines. For example, a letter from Philippines, described the Petitioner's volunteer work within the as a teacher, interpreter, and catechist for hearing-impaired children. city mayor of Philippines, expressed his gratitude to the Petitioner for establishing a school for the deaf in and continuing to provide financial support for its operation after leaving for the U.S. He indicated that the school has grown to a special education center "serving all disabilities." The record includes a 2007-2008 "Annual Accomplishment Report," authored by the Petitioner, describing the goals, strategies, and achievements of the

The Director issued a request for evidence (RFE) on January 17, 2012, requesting additional documentation to establish the Petitioner's eligibility under the analysis set forth in *NYSDOT*. She was asked, in part, to confirm that the benefits of her proposed work are national in scope, and that she has a past record of specific prior achievement with some degree of influence on the field as a whole.

In a letter responding to the RFE, the Petitioner stated that Congress intended the national interest waiver, enacted as part of the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), to allow flexibility in determining "the prevailing specific need of the nation." The Petitioner cited federal education laws and initiatives, including the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), as evidence that the government has "deemed" the teaching profession to be national in scope. As supporting evidence, she submitted copies of the cited laws, as well as articles about special education policy and the demand for special education teachers.

With regard to her influence on the field, the Petitioner discussed her establishment of the special education school in and described the "pioneering special education programs" that she instituted there. She further stated that her "prior achievements and individualized focus raise the bar in special education; as a recognized and distinguished educator, she clearly has impacted her

[2] While we discuss only a sampling of these letters, we have reviewed and considered each one.

professional field by providing novel methods for deaf education and implementing deaf education programs where none before existed."

On May 16, 2012, the Director denied the Form I-140, finding that the Petitioner did not establish that the benefits of her work have national scope, or that she has had a degree of influence on her field as a whole. The Director dismissed subsequent motions to reopen and reconsider, determining that the Petitioner had not met the applicable regulatory requirements for filing a motion.

In her brief on appeal, the Petitioner states that the work of teachers results in the creation of responsible citizens and a productive work force. She asserts that the benefit of that work "spreads to the entire nation's economy and security," and is thus national in scope. The Petitioner again cites laws and initiatives highlighting the national importance of having "highly qualified teachers." In addition, she quotes remarks made by President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." The Petitioner interprets this passage to mean that Congress created the national interest waiver with the intent that it be utilized by highly qualified educators.

Regarding the third prong of *NYSDOT*, the Petitioner contends that the Director erroneously required evidence of past achievement "tantamount to having exceptional ability," which she states was not necessary because she qualifies as a member of the professions holding an advanced degree. She indicates that requiring a labor certification in her case would "delay if not completely frustrate" the employment of highly qualified teachers demanded by the NCLBA because her qualifications exceed the minimum requirements for a special education teacher and therefore could not be reflected on a labor certification.

III. ANALYSIS

We find the Petitioner has not shown that the benefits of her proposed work are national in scope. As discussed above, she asserts that her work will further the national interest of hiring "highly qualified teachers," as described in the NCLBA. The Petitioner submits no evidence that Congress intended for the NCLBA to affect the adjudication of national interest waiver applications. Further, President Bush's remarks upon signing the Immigration Act of 1990 do not demonstrate that the national interest waiver was created specifically for use by teachers. That statute was not restricted to the creation of the waiver, but instead created new employment-based immigrant classifications to replace the "third preference" and "sixth preference" classifications previously in place. "[S]cientists and engineers and educators," as mentioned in President Bush's remarks, are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

The federal education statutes and initiatives cited by the Petitioner address the intrinsic merit of education, which the Director did not dispute, and they describe national goals. They do not, however, state or imply that the work of one teacher significantly contributes to those goals, nor has

the Petitioner demonstrated that her work as an individual will further those objectives on a nationally significant level. This finding is consistent with *NYSDOT*, which cited a classroom teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility. *NYSDOT*, 22 I&N Dec. at 217, n.3.

Under the third prong of the *NYSDOT* analysis, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 218. In order to make such a demonstration, it is neither necessary nor sufficient for an advanced degree professional to meet evidentiary requirements for an individual of exceptional ability, as eligibility for the underlying classification is separate from the threshold for the national interest waiver. Rather, a petitioner must have a past record that "justifies projections of future benefit to the national interest" by showing that he or she has had "some degree of influence on the field as a whole." *Id.* at 219, n.6.

In this instance, the Petitioner has submitted documentation of her work at the local level, including letters that reflect the positive impact she has had on her own students. The record does not establish, however, that she has had a broader impact within her field. The Petitioner has stated that she implemented "pioneering" programs at the school she founded in the Philippines, and the record indicates that she has served as a resource speaker at special education events. However, no evidence was submitted to show the originality of her methods or programs, or to demonstrate that they have had an effect on the field of special education. While particularly significant awards may serve as evidence of impact on a field, the Petitioner did not demonstrate that her awards are indicative of such influence. For these reasons, we find the record insufficient to establish that the petitioner has had some degree of influence on the field as a whole.

While the Petitioner asserts that her qualifications exceed those that could be listed on a labor certification application, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n.5. Based on the above discussion, we find that the Petitioner has not made such a demonstration.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that either the scope of the Petitioner's proposed work or her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his or her influence be national in scope. *Id.* at 217, n.3. Considering the record, the Petitioner has not established by a

preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-E-*, ID# 13965 (AAO Jan. 14, 2016)